IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. 259-DBA of 1997

Date of Decision :- October 26, 2006.

State of Haryana ....APPELLANT

VERSUS

Gopal and another ....RESPONDENTS

Criminal Revision No. 197 of 1997

Partap ....PETITIONER

VERSUS

Gopal and another .... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE BALDEV SINGH

Present:- Mr. Kulvir Narwal, Addl. Advocate General, Haryana assisted by Mr. Salil Bali, Advocate for the complainant.

Mr. Kapil Aggarwal, Advocate for the respondents.

MEHTAB S.GILL, J.

We will be taking up Criminal Appeal No. 259-DBA of 1997 and Criminal Revision No. 197 of 1997 together, as both arise out of the same judgment/order. Criminal Appeal No. 259-DBA of 1997 and

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Criminal Revision No.197 of 1997 have been filed by the State and the complainant respectively, against the order of acquittal of the respondents/accused dated 25.7.1996 passed by the learned Sessions Judge, Hisar.

Partap PW8 gave a statement to the police that on 22.7.1994 at about 11.30/12.00 noon, he along with his brothers Krishan deceased and Hazari were going on cycles to Hisar from their village to get construction work (shuttering). As they reached near Bharat Gas Plant, the two accused Gopal and Krishan sons of Gian Singh emerged from the kikar trees. Gopal was armed with a Kassi and Krishan accused was without any weapon. Krishan accused caught hold of deceased Krishan and Gopal gave a Kassi blow on the head of Krishan deceased. Krishan deceased ran towards the gas plant. Both the accused followed him. He was thrown on the ground. Krishan accused sat on the legs of the deceased and thereafter Gopal gave 6-7 blows of Kassi on his jaw, chest and neck. Both Hazari PW9 and Partap PW8 raised an alarm. The accused ran away from the spot leaving the Kassi and a pair of Chappals at the spot. On the basis of this statement, FIR Ex.C/1 was recorded.

The prosecution to prove its case brought into the witness box Constable Mian Singh as PW1, Mahinder Singh Patwari as PW2, Ram Kumar as PW3, S.K.Jain as PW4, SI Jagbir Singh as PW5, Dr. R.S.Bishnoi as PW6 Hukam Singh as PW7, Partap as PW8, Hazari as PW9, Constable Ramji Dass as PW10 and SI Krishan Kumar as PW11.

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Learned counsel or the State has argued that the two eye witnesses to the occurrence Partap PW8 and Hazari PW9 have corroborated each other and also got corroboration from the medical evidence. Dr. R.S.Bishnoi PW6, who performed the post-mortem examination, found eight injuries on the person of the deceased, seven of them being incised wounds. Both the eye witnesses were travelling on a cycle along with deceased Krishan, who was on a different cycle. There is no delay in lodging of the FIR. Occurrence had taken place at 11.30/12.00 noon on 22.7.1994 and by 7.20 p.m. the special report was in the safe hands of the Ilaqa Magistrate.

Learned counsel for the respondents-accused has argued that there is no infirmity in the judgment of the learned trial Court. There is an unexplained delay in the lodging of the FIR. The two eye witnesses Partap PW8 and Hazari PW9 being the real brothers of the deceased, did not come forward to help him. It is strange that Partap PW8 has stated that he did not go to the police post, which was 2 K.Ms. away from the place of occurrence, due to the reason that it had started raining. This itself shows that Partap PW8 was not present, otherwise he would have immediately gone to the police to inform them of the murder of his brother. He did not make any effort to contact any person from the premises of Bharat Gas Plant. The body was lying in front of the gate. The medical evidence does not corroborate the ocular account. Dr. R.S.Bishnoi, PW6 has stated in his testimony before the Court that faecal matter was present in the large intestine and the deceased must have taken his meals 6-8 hours before his

death, meaning thereby that when the deceased left for Hisar, he did not take his meals though both the witnesses Partap and Hazari have stated that they had eaten meals before leaving for Hisar. This is not probable.

We have heard the learned counsel for the parties and perused the record and impugned judgment with their assistance.

Both the eye witnesses Partap PW8 and Hazari PW9 were on cycles. The deceased and both the eye witnesses were real brothers. Occurrence had taken place in front of the gate of Bharat Gas Plant. The distance between Village Dhansu of the deceased and the place of occurrence was 6 K.Ms. It is strange that though both Partap PW8 and Hazari PW9 saw the deceased being attacked by the accused but they did not go forward to save him nor did they shout for any help from Bharat Gas Plant, though there were 40-50 workers present in the plant. Occurrence, according to the prosecution, had taken place at 11.30/12.00 noon. Both the eye-witnesses Partap PW8 and Hazari PW9 have stated, that they started for Hisar after taking the meals. If Partap PW8 and Hazari PW9 had eaten their meals, deceased Krishan must have also taken his meals and then left for Hisar. Dr. R.S.Bishnoi PW6 has opined that faecal matter was present in the large intestine of the deceased though his stomach was empty. According to him, the deceased must have taken his meals 6-8 hours earlier to his death. As per the medical evidence, it comes out that occurrence had taken place at 5.00/6.00 A.M. on 22.7.1994. The report was lodged with the police at 5.00 p.m. on the same day i.e. 22.7.1994. No explanation is coming from the side of the prosecution

apart from that it was raining on that day and thus, the eye witnesses could not go to the police post, which was 2 K.Ms. away, to inform them of the death of their brother.

We are of the considered opinion that there is an unexplained delay in the lodging of the FIR. The medical evidence does not corroborate the ocular account. The alleged eye-witnesses Partap PW8 and Hazari PW9 were not present at the time of the occurrence and they are implanted witnesses.

We do not find any infirmity in the judgment of the learned trial Court. Appeal of the State is dismissed. Revision filed by the complainant is also dismissed.

(MEHTAB S.GILL)
JUDGE

(BALDEV SINGH)
JUDGE

October 26, 2006
SKA

WHETHER TO BE REFERRED TO REPORTER? YES/NO